IN THE HIGH COURT OF BOMBAY AT GOA.

CRIMINAL APPEAL NO. 67 OF 2003.

State through Public
Prosecutor, Panaji. ... Appellant.

Versus

1. Mr. Xavier Fernandes,
2. Mr. Remet Fernandes,
3. Mr. Santiago Fernandes,
4. Mrs. Cyrila Fernandes,
5. Mrs. Caitano Fernandes,
6. Miss Soccorina Fernandes,
   all r/o H. No. 299,
   Sawantawaddo, Kakoda,
   Curchorem.
7. Mr. Constancio Braganza,
   r/o H. No. 297, Sawantawaddo,
   Kakoda.
8. Mr. Ashok Naik, r/o H. No.
   42, Maad, Bansai, Kakoda. ... Respondents.

Mr. S.N. Sardessai, Public Prosecutor for the Appellant/State.

Mr. A.P. Lawande, Advocate for the Respondents.

Coram : P.V. HARDAS, J.

Date : 20th November 2003.

ORAL ORDER.

This is an appeal filed by the State praying for enhancement of the sentence of respondents 1 to 6 and also questioning the correctness of the acquittal of the respondents 7 and 8 as recorded by the Judicial Magistrate, First Class, Quepem, by Judgment, dated 11th February 2003, in Criminal Case No. 71/S/96/A. During the hearing Mr. Sardessai, the learned Public Prosecutor appearing on behalf of the appellant/State, has submitted that the prayer for setting aside the acquittal of respondents 7 and 8 is not being pressed by

the appellant/State in the present Appeal and the appellant/State, therefore, restricts the scope of the Appeal to enhancement of the sentence as passed against respondents 1 to 6.

2. The learned trial Court had convicted respondents 1, 2 and 3 for an offence punishable under Section 323 read with Section 34 of the Indian Penal Code and had sentenced them to undergo 15 days simple imprisonment and fine of Rs. 750/- each with a default stipulation of simple imprisonment for 10 days each on the failure of the respondents/accused to pay the fine. In respect of respondents 4, 5 and 6, the learned trial Court had convicted them for an offence punishable under Section 323 read with Section 34 of the Indian Penal Code and had sentenced them to pay fine of Rs. 750/- with a default stipulation of simple imprisonment for 10 days, in the event fine was not paid.

3. In sub-paragraph (4) of paragraph 12 of the Judgment, the learned trial Court, while sentencing the respondents/accused as aforestated, had passed the aforesaid sentences in respect of respondents 4, 5 and 6 on the ground that respondents 4 and 6 are mothers of minor children and respondent no. 5 is an aged lady, who is the mother of original accused 1 to 3. In such circumstances, the learned trial Court had shown

leniency and had, accordingly, sentenced respondents 4, 5 and 6. In respect of respondents 1 to 3, they are convicted and sentenced to undergo 15 days simple imprisonment and payment of fine. Section 323 of the Indian Penal Code prescribes a punishment of either description for a term which may extend to one year or with fine which my extend to Rs. 1,000/-. What sentence is to be passed is within the exclusive domain of the Court deciding the trial. Unless and until the sentence, which is passed, is grossly disproportionate to the offence, which is alleged, the appellate Court would be slow in interfering. In the present case, the learned trial Court has given reasons for sentencing the respondents/accused as aforestated.

4. In view of this, according to me, the appeal is sans merit and deserves to be dismissed and is, accordingly, dismissed.

(P.V. HARDAS)
JUDGE.

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